

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

**UNISON BEHAVIORAL HEALTH
GROUP, INC.**

Employer

and

CASE NO. 8-RC-16492-1

**INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL 18, 18S, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act (the Act), a hearing was held before a hearing officer of the National Labor Relations Board (the Board).

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.¹

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

*All regular full-time and part-time Community Service Providers
(CSP), Forensic Specialists, Consumer Advocates-PACT, Care*

¹ Upon the entire record in this case, the undersigned finds: The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purpose of the Act to assert jurisdiction herein. International Union of Operating Engineers, Local 18, 18S, AFL-CIO, herein referred to as Petitioner, is a labor organization that claims to represent certain employees of the Employer.

Management Specialists, Forensic Service Providers and Intake Screeners employed by the Employer at its Toledo, Ohio area locations, but excluding all office clerical employees, maintenance employees, professional employees and other clinical staff, guards and supervisors as defined in the Act.

The Employer operates a private non-profit community mental health agency in Toledo, Ohio. There are approximately 53 employees in the unit found appropriate herein.

THE ISSUE

At issue in this matter is the scope of the proposed bargaining unit. The Petitioner seeks to represent a unit that includes the Community Service Providers (CSPs) employed by the Employer as well as several related job classifications that are not engaged in providing therapeutic services.² For its part, the Employer maintains that the only appropriate unit would also encompass all of its “clinical” or “direct care” staff including RNs, therapists, counselors and others engaged in providing therapeutic services.³ As proposed by the Employer, the unit would include approximately 122 employees working in 23 job classifications.

FACTS

The Employer

The Employer is a non-profit community mental health agency based in the Toledo, Ohio area. It is certified by the Ohio Department of Mental Health to provide the following community-based services: counseling/psychotherapy; community support program; diagnostic assessment; crisis intervention; pre-hospitalization; medication somatic; consultation; and partial

² Initially, in its petition and at the hearing, the Petitioner sought to limit the unit to employees located at the Employer’s Woodruff facility. At the hearing, however, the Petitioner stipulated on the record its desire to amend the petition and to represent all CSPs and related job classifications (Forensic Specialist, Care Management Specialist, and Consumer Advocate-PACT) regardless of location. This stipulation mooted location as a separate issue.

³ The Employer stipulated that the unit should not include the following employees: “physicians, office clericals, supervisors, managers, guards, administrators, accountants, nurse practitioners and psychologists.

hospitalization. It is certified by the Ohio Department of Alcohol and Drug Addiction Services to provide outpatient services to persons dually diagnosed with severe and persistent mental illness and addiction. Finally, the Employer is accredited by the Joint Commission on Hospital Accreditation as a community mental health facility.⁴

The operations of the Employer are largely based at facilities that it owns or leases. Its primary Toledo locations are at Woodruff Avenue, Starr Avenue, Jefferson Avenue, St. Claire Group Home and HUD Group Homes. It also provides services at other program based sites such as the Lucas County Jail, Toledo Municipal Court, St. Paul's Homeless Shelter and the Juvenile Jail. Employees also furnish services at the homes of clients and at other locations in the community. The Employer serves about 5000 clients a year, approximately 2400 of whom are adults with a diagnosis of Severe and Persistent Mental Illness (SPMI), and approximately 500 of whom are children diagnosed as Seriously and Emotionally Disturbed (SED). Client services are primarily paid for by various public agencies and governmental programs such as Medicare and Medicaid.

At the hearing, the Employer's witnesses described the process by which services are designed and delivered to its clients.⁵ Clients are referred from any number of sources including hospitals, a psychiatrist, a teacher or a family member. They are initially met by an intake screener who records their demographic information, describes their problem and schedules the client for a diagnostic assessment. The diagnostic assessor, an employee who is licensed and required to have a four-year college degree, then performs an in-depth study of the client and

⁴ Given this description of the services provided by the Employer, I find that it is a health care institution within the meaning of Section 2(14) of the Act.

⁵ This testimony was primarily provided by Larry Hamme, Vice-President for Operations, and Theresa Butler, Director of Community Support Services.

produces an initial Individualized Service Plan (ISP) that translates the client's needs into a treatment plan.

The initial ISP is normally designed for a 30-day period. Nearly all clients are found to need medical services and most of them are assigned to a primary care provider. In most cases, the latter is a CSP, although the initial assessment may result in a therapist being assigned. The primary care providers, as well as direct care providers assigned to the client, help devise a core treatment plan for the client that will last up to 90 days. The record does not clearly identify the process by which this plan is developed although it is noted that a single clinical chart for each client includes the progress reports entered by those that meet with or treat the client. Testimony also shows that the staff who provide treatment meet or otherwise engage in a process of adjusting the ISP as needed.

The Petitioned-For Employees

Of the 23 job classifications included in what the Employer calls its "clinical staff", the Petitioner seeks to represent only the CSPs, the Forensic Specialist, the two Consumer Advocate PACT team members and the Care Manager. It describes the CSPs as "gatekeepers" who coordinate services for clients and act as their advocates in the system. The other three job classifications it seeks perform similar functions. According to the Petitioner, these employees are distinguished from the other job classifications because they, unlike the others, do not actually provide therapeutic services. Furthermore, these "gatekeepers", with the exception of the Child CSP, Andrea Cutway, share common supervision under supervisors who answer to Theresa Butler, the Director of Community Support Services. Butler is supervised by Larry Hamme, the Employer's Vice-President of Operations.

In objecting to the petitioned-for unit, the Employer maintains that its clinical staff is functionally integrated in providing services to clients. It notes that they are organized in teams that operate on service needs rather than department structure. Furthermore, the Employer claims that there is significant contact between clinical staff and that their duties may overlap. As a result, it argues that the work performed by CSPs is closely related and intertwined with the duties performed by the other clinical staff.

The position of CSP is defined in the Ohio Administrative Code. In summarizing that definition, the Employer's CEO, James Wares, stated that CSPs provide services, or refer services to mentally ill clients so that they can succeed in the community. More specifically, Wares noted that each CSP is assigned a client list and is responsible to visit those clients in their homes, check on them and support them by assuring that they receive the services prescribed by the ISP. The CSP may also seek to procure other services for the client that he or she may deem necessary.⁶ Other Employer witnesses referred to the CSPs as "coordinating" client services. There is no assertion in the record that CSPs directly provide therapeutic services to clients.⁷

Indeed, the job description for CSP does not include a licensing requirement or the need for a specific educational degree.⁸ The Employer's Human Resources Director, Patricia Czerminski, testified that the CSP classification is an entry-level position and she conceded that there is no licensing requirement. She also acknowledged that the Employer hires a fair number of CSPs right out of school, apparently referring to the lack of a need for a college degree. The Employer's job descriptions for CSP positions note that as an alternative to holding a mental

⁶ In years past, the CSP position was entitled "case manager."

⁷ CSPs engage in crisis intervention when necessary. The record indicates, however, that their involvement is consistent with their other duties and does not involve providing therapeutic services.

⁸ Although a college degree is not required, all or most of the Employer's current CSPs hold at least an associate's degree.

health license, the jobholder can have “significant work experience with individuals with severe and persistent mental illness.”⁹ Thus, the record establishes that there is no requirement that a CSP hold a license.

Theresa Butler testified that the training for CSPs is unique to them and involves eight weeks of shadowing other CSPs and visiting outside resources. CSPs do not shadow any other job classifications during their training period. CSP positions are interchangeable with other CSPs. The record fails to establish, however, that the CSP position is interchangeable with any of the job classifications that provide direct treatment to clients. On the contrary, Czerminski’s testimony indicates that they are not interchangeable with most other clinical staff positions.¹⁰ The CSP position is also characterized by the significant amount of time spent in the field servicing clients. Indeed, CSPs are assigned agency vehicles in order to perform these services.

The Forensic Specialist (FS) performs duties akin to a CSP. According to Theresa Butler, the FS works at the County Jail and identifies all Unison clients in the criminal justice system. She then coordinates services for these clients with Unison staff as well as with the Municipal Court and the Common Pleas Court. According to the Employer’s job description, the position requires a social work or counselor license. The current holder of the position does not have a college degree.

There are two employees who are currently classified as Consumer Advocate-PACT. According to Czerminski, these employees perform CSP services for individuals who are in jail. They essentially work at the Toledo Municipal Court although they may have occasion to visit a

⁹ These job descriptions contradict Czerminski’s testimony that CSPs are required, at minimum, to have an Associate’s Degree.

¹⁰ The exception would be the forensic service provider position.

client's home. Czerminski testified that, like the CSPs, the Consumer Advocates engage in advocacy on behalf of their clients and their work is interchangeable with that of the CSPs. Their job description indicates that they assist with links to mental health agencies and mental health care support systems at Unison and in Lucas County. Like CSPs, there is no education or licensing requirement for the job of Consumer Advocate-PACT.

Finally, the Petitioner would also include the position of Care Management Specialist in the unit. Czerminski testified that this individual works with clients who are hospitalized and essentially performs the same duties as a CSP. She noted that CSPs were formerly known as case managers. The Employer's job description states that the Care Management Specialist, among other tasks, coordinates continuum of care for inpatients and monitors hospital length of stay and discharge planning. The holder of this position is required to have a two or four year degree in mental health or a related field.

The Employees the Petitioner Seeks to Exclude

The Petitioner takes the position that the employees it seeks to represent are different from the other clinical staff in several key respects. The primary difference is that while the CSPs coordinate services for clients, the others directly provide specific mental health medical and/or counseling services. In addition, with only a few exceptions, the latter group is required to hold a degree and be certified or licensed as counselors or social workers.

The Employer employs two Clinical Therapist CD Counselors/ Dual Recovery. Although these individuals are situated in the Community Support Services Department headed by Butler, they provide direct counseling services to clients who have mental illness as well as a substance abuse problem. The position requires, at minimum, one of the following licenses: LPC (Licensed Professional Counselor), LPCC (Licensed Professional Clinical Counselor), LISW (Licensed

Independent Social Worker), LSW (Licensed Social Worker). The minimum educational requirement to hold any of these licenses is a Bachelor's Degree. The Employer, according to Czerminski, requires that the position holder also be in progress toward a Master's Degree. These counselors are primarily located at Woodruff.

Nineteen other clinical therapists are employed by the Employer at its Jefferson, Woodruff and Starr locations. Nearly all of them fall on the Employer's organization chart under Short-Term Care, a division that is headed by Vice-President Courtney Weiss. According to the job descriptions under this classification, the clinical therapists provide diagnostic assessment, treatment planning and counseling service through either individual, group or family therapy. Those therapists who work in Partial Hospitalization have the same licensing and educational requirements as the CD Dual Recovery Counselors. The therapists who work in this classification and are in Short Term Care are required to either hold or be in progress on a Master's Degree and to have an LSW at minimum.

There are three Community Integration Specialists all of whom are employed at the Jefferson site. They also fall within the Short Term Care division on the Employer's organization chart. According to Courtney Weiss, Vice-President for Short Term Care, these specialists work in a "psychosocial rehab" program engaging directly with clients to teach them certain social skills. The job description notes that they work in the New Horizons Program¹¹ under a separate grant. The individuals holding this position are required to have a Bachelor's Degree related to any one of the four components of the program: socialization, education, recreation and volunteerism.

¹¹ The New Horizons program also includes Community Integration Assistants who, as evidenced by their title, provide assistance to the Community Integration Specialists. According to the job description, these positions are held by "consumer[s] of mental health services." This position is also referred to as Recreation Assistant.

Five Diagnostic Assessors and a Diagnostic Assessor/Hospital Liaison perform the diagnostic services provided by the Employer. They are all found in the Short Term Care division. The Hospital Liaison is located at Woodruff while the others are based at Starr. These assessors are required to have either a social work or counseling license. According to Czerminski, they are also required to have at least a four year college degree.

There are three Forensic Service Providers situated in the Community Support Services Unit headed by Butler. They are located at either the Toledo Municipal Court or the County Jail. The job description states that these individuals provide case management services to mentally ill consumers who are detained/released from the Lucas County Correction Center or involved with the Toledo Municipal Court. Their primary tasks are case management, referrals for services and advocacy. Apparently what separates these job holders from the CSPs and the Forensic Specialist is that they are required to have, at minimum, a counselor or social work license which in turn presumes a Bachelor's Degree.

Two Intake Screeners are employed in Short Term Care. Their purpose is to "provide effective and rapid response to requests for treatment." They are responsible for screening phone calls, gathering or providing information and advising consumers of appropriate services or making referrals. The job description states that a counselor or social work license is preferred for the position. The Screeners are located at Starr.

The Employer employs one Mental Health Counselor at the Juvenile Detention facility. That position, found under Short Term Care on the Employer's organizational chart, requires an LSW license at minimum. The Counselor provides counseling services directly to youths incarcerated at the facility and therefore, according to the job description, must have individual and group counseling skills.

Four Rehabilitation Specialists are employed at the Jefferson site and are found under Short Term Care on the organizational chart. The job description requires them to have an Associates Degree at minimum as well as a license or certification from the Counselor and Social Worker Board. They work directly with clients in the Aim High Program assisting them “in participating in the work ordered day Club functions or Vocational programs.”

Fourteen Residential Care Specialists are employed at the Employer’s group homes and they provide residents with “support in daily living skills, skill building and recreational activities.” There are no educational or licensing requirements for this position although prior direct care experience or mental health license or registration is preferred. These Specialists are required to have knowledge of mental illness and the ability to develop positive relationships.

The Employer employs 14 Registered Nurses with seven located at Woodruff, six at Starr and 1 at Jefferson. Two of these Nurses work on the PACT Team which is assigned to handle clients who have been adjudged to be not guilty by reason of insanity or who otherwise have some involvement in the criminal justice system. Although the PACT Team is found on the organizational chart under Community Support, the RNs on the Team are supervised by Kimberly Rioux, the Nursing Supervisor, and not by Butler. According to the Employer’s job description, holders of the various nursing positions must have either an RN or an LPN license, “with meds certification,” and psychiatric nursing experience. The Nurses provide direct medical care to clients.

The final job classification under consideration is a Registered Art Therapist to provide art therapy services to clients. This position requires, at minimum, a Art Therapy Certification, a prerequisite of which is a Master’s Degree. The Art Therapist is located at Jefferson and is found on the Short-Term Care chart rather than on the chart for Community Support.

In sum, most of the positions the Employer seeks to include and the Petitioner wants excluded have either a licensing requirement or the need for an educational degree. The exceptions are the Community Integration Assistants (Recreation Assistants), Residential Care Specialists and Intake Screeners. Nearly all of the job classifications the Petitioner seeks to exclude entail direct patient care. The record indicates that in this group, only the Intake Screeners and Forensic Service Providers do not engage primarily in direct patient care.

Employment Policies

There is no dispute on the record that the employment policies of the Employer apply equally to the petitioned-for employees and to those the Employer seeks to include in the unit. All employees receive the same Employee Handbook. For the most part, hiring is centrally conducted by the Human Resources Director through various means including posting job openings at all of the facilities.¹² The record further indicates that, with respect to safety issues, employees receive common training.

Regarding benefits, all employees receive the same health insurance, pension, vacation, sick leave, leaves of absence, holidays and other fringes. Also, work rules and rules of conduct are uniform for all employees. There is no set schedule of work hours that applies to all employees as flexibility is required to meet program needs. However, all full-time employees under consideration herein work a 35-hour Monday through Friday week except for those on the PACT Team who must be available 24 hours/seven days per week on a rotational basis.

The Employer's salary scale identifies ten grade levels, each of which represents a wide range of pay. Grade level four ranges from annual pay of \$18, 600 to \$27,900 and includes the

¹² Human Resources Director Czerminski acknowledged that there are occasions when managers directly receive resumes and apparently take the lead in the hiring process. She added that she works very closely with them in those situations.

Residential Care Specialists as well as all “clinical staff” who have an Associate’s Degree or less. Grade five ranges from \$21, 389 to \$32,083 and includes all “clinical staff” who hold a license or a Bachelor’s Degree. “Clinical staff” who have a Master’s Degree without an independent license fall into Grade six which pays between \$25, 239 and \$37, 859. RNs, the Art Therapist and “clinical staff” who have an LISW or LPCC are included in grade seven, which pays between \$29, 561 and \$44,341. This scale indicates that for most clinical staff, salary is largely determined by the educational degrees or licensing they hold. The record shows that currently employed CSPs, most of whom have an educational degree, fall into grades four and five but it does not reflect their specific wage rates.

Employee Contact and Interchange

The Employer asserts that all of its clinical staff, including CSPs, experience a high degree of contact and employee interchange. According to the Employer, this occurs as a result of its team approach to treatment. Also, aside from witness testimony, the Employer sought to demonstrate functional integration by offering exhibits concerning billing for CSP services, employee transfers and graphic representations of the treatment process.

Although the Employer’s witnesses spoke frequently of a team approach, the only teams described on the record are those composed primarily of CSPs. Theresa Butler explained that there is one CSP team at Starr and then four at Woodruff one of which is the PACT Team. She stated that there is a forensic team for those who work at the Court and the Jail. Also, she stated that the CSP assigned to the St. Paul facility is a team unto herself.

From the record, it appears that only one of these teams, the PACT Team, has non-CSP members. There are two nurses assigned to the PACT Team and there is a single doctor designated to treat all the clients served by it. The PACT Team meets with supervision three

times a week and their meetings include the nurses. The other CSP teams meet once a week. Outside of the PACT Team, which includes five CSPs, there is no evidence that CSPs routinely meet in supervised meetings with other clinical staff. Rather, the record indicates that they come into face-to-face contact with other staff on an as needed basis while arranging services for their clients.

To prove that other clinical staff aside from CSPs perform CSP services, the Employer provided an exhibit that documents the raw number of hours billed by clinical staff for CSP services over a nearly three month period. The document shows that there are other staff that bill out under the CSP code. However, the number of hours billed by these few employees is statistically insignificant compared to those billed by the CSPs. The only exceptions are the RNs on the PACT Team and the CD Counselors. The record, however, fails to explain why the CD Counselors bill out for CSP services at a rate higher than CSPs do when those counselors' primary duty is to provide therapeutic services. The evidence fails to specify what tasks are performed by these employees that would cause them to use the CSP billing code.

The Employer also submitted a document to show that there are employee transfers to and from the CSP position. The document, however, is entitled "Employees who transferred from CSP Position" and focuses almost exclusively on employees who have transferred from the CSP position to another job in the Agency. It reinforces the testimony cited above that the CSP job is an entry-level position from which employees seek to be promoted to a higher level job. There was testimony that several employees came to the CSP job from other positions but those instances were few and marked by special circumstances. For example, employee Heather Pierce became a CSP after having previously been a therapist. However, in the interim, she had resigned from the Employer and been away for six months.

Finally, to demonstrate employee interchange, the Employer emphasizes its treatment process. It notes that any number of clinical staff, including CSPs, are called into play in the process of providing services and treatment to a client. This process requires face-to-face contact between staff. However, the record does not show that there is any interchange of responsibilities in this process. Furthermore, evidence does not establish what if any level of integration of duties exists.

ANALYSIS AND CONCLUSIONS

The Employer is in the business of providing mental health services to its clients in various community settings. As such it fits the definition of a health care institution found in Section 2(14) of the Act.¹³ The Board set forth its standards for determining appropriate bargaining units in the non-acute health care field in its decision in **Park Manor Care Center, 305 NLRB 872 (1991)**. In that case, the Board stated that it would use a pragmatic and empirical community of interest test that applies traditional community of interest factors as well as factors considered in the rulemaking process used with respect to acute health care facilities. This test must therefore be applied to determine whether the unit of CSPs¹⁴ sought by the Petitioner is appropriate.

Although the Employer does not disagree with this analysis, it presumes that there is a threshold issue as to whether the CSPs are technical employees within the meaning of the Act. The Employer argues that they are technical employees and therefore cannot appropriately be divided from the other technical employees it employs. See, **Pratt & Whitney, 327 NLRB 1213**

¹³ Section 2(14) reads as follows: “The term ‘health care institution’ shall include any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of the sick, infirm, or aged person.”

¹⁴ Hereafter in this discussion, reference to “CSPs” includes all CSPs as well as the other job classifications in the petitioned-for unit.

(1999). In its brief, the Petitioner does not address this issue but rather tacitly presumes that the CSPs are not technical employees. Since technical employees are one of the groups identified by the Board in its rulemaking process, the issue of whether CSPs are technicals must be answered before a **Park Manor** analysis can be made.

The CSPs Are Not Technical Employees

The Board has defined a technical employee as an employee who does not meet the strict requirements of the term “professional employee” under the Act, but whose work is of a technical nature involving the exercise of independent judgment and requiring specialized training usually acquired in colleges or technical schools or through specialized courses.

Brattleboro Retreat, 310 NLRB 615, 621 (1993), citing Southern Maryland Hospital Center, 274 NLRB 1470, 1471 (1985). Furthermore, the Board has traditionally found certain mental health workers to be technical employees. The question is whether the Employers CSPs are mental health workers in the same sense as the employees considered in prior Board cases.

The Employer cites three cases in which the Board has found mental health workers to be technical employees. In the oldest of those cases, **Butler Hospital, 250 NLRB 1310 (1980)**, the mental health workers were considered to be part of the employer’s nursing staff in a psychiatric hospital. Although they did not have a licensing or advanced degree requirement, the mental health workers received extensive training including ongoing instruction and weekly case conferences with the professional and other technical staff. Each worker was assigned up to four patients during a shift and participated in the daily staff conferences with the treating attending physicians on each case. As a member of a treatment team, they helped to develop a treatment plan for each patient and to determine which activities best met a patient’s needs. Their goal was to develop a “therapeutic interpersonal relationship” with patients.

In **Community Health Services, Inc.**, 259 NLRB 362 (1981), the Board found that the mental health workers of the employer were similar to those in **Butler Hospital**. It also noted that, among their other duties, the mental health workers planned and participated in group therapy sessions along with other employees of the employer. In **Brattleboro Retreat**, the Board noted that the mental health workers at issue therein were similarly situated to those in **Butler Hospital** and **Community Health Services**. The mental health workers in **Brattleboro Retreat** were part of treatment teams that were composed of professional and non-professional employees. Each team consisted of a mental health worker, physician, social worker, nurse, an employee from the therapeutic activities department and a discharge planner. The teams met frequently and had continuous daily contact concerning patient care.

The evidence in the instant matter reflects substantive differences between the mental health workers in the above-referenced cases found to be technical employees and the Employer's CSPs. The primary difference is that the CSPs do not provide therapeutic services. In each of the cases cited above, the mental health workers at issue participated directly in the therapeutic process. In **Butler Hospital**, the mental health workers participated in daily conferences with the physicians and were part of a treatment team that included other job classifications. They were expected to develop a "therapeutic interpersonal relationship" with each patient. The same was true of the mental health workers at issue in **Community Health Services** who also were expected to take part in group therapy sessions with patients. The Board noted that the mental health workers in **Brattleboro Retreat** had the same job requirements as those in the aforementioned cases and also were integrated into multidisciplinary treatment teams that met on a daily basis with respect to patient care.

In the instant case, with the exception of the two RN's on the PACT Team, the CSPs are organized into supervisory teams that include only other CSPs. The Employer claims to use a team approach in patient care but its organization and operation do not reflect a functional team approach with respect to CSPs. There is no record evidence that they meet on a daily basis with physicians or any other clinical staff in an integrated fashion concerning patient care. The central operative fact, as distinguished from the prior cases considered by the Board, is that the CSPs do not engage in therapy or in daily team decisions concerning the therapy applied to patients.

There is also a distinction in the education and training of CSPs as opposed to the mental health workers in the cases relied on by the Employer. While neither of these groups require licensing or educational degrees as a prerequisite for hiring, the mental health workers in the above-referenced cases were engaged in significant and ongoing training and education programs. The CSPs here have minimal training after hire and there is no evidence indicating they take part in any ongoing training or education programs.¹⁵

In sum, the CSPs do not play a therapeutic role as individuals or in a team context. Rather, they are engaged in the basic position of acting as service coordinators. Without a threshold educational or licensing requirement, the CSPs do not even perform diagnostic assessments of clients. Rather, they receive the assessments from other employees and apply the conclusions of the latter in arranging for services. Thus, they exercise only minimal independent judgment in performing their duties. Given their lack of educational/licensing requirements, specialized training, continuing education requirements and direct involvement in the therapeutic

¹⁵ The Employer requires all of its staff to go through a privileging process whereby it verifies that every individual meets the licensing and education requirements set forth for each task they perform. CSPs are treated as a distinctive group with respect to this process and are only privileged to engage in two tasks: case management and crisis intervention. The Employer noted that those employees who are required to have licenses for what they do must meet continuing education requirements associated with those licenses. Since there is no license requirement for the tasks performed by CSPs, they apparently do not have these requirements.

services given clients, I find that the CSPs at issue are not technical employees within the meaning of the Act.

The Appropriateness of the Petitioned-For Unit

Having decided that the CSPs are not technical employees, the question remains whether the petitioned-for unit is appropriate, based upon the community of interest standard of **Park Manor**, without the inclusion of the professionals, technicals and other non-professionals referred to above. In **Park Manor**, the Board recommends a pragmatic use of traditional community of interest factors as well as a look at any considerations arising from the rulemaking process with respect to health care institutions. Common factors examined in a community of interest analysis include degree of functional integration, common supervision, the nature of employee skills and functions, interchangeability and contact among employees, general working conditions and fringe benefits.

Before undertaking this analysis, it must be noted that nothing in the Act requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit. Rather, the Act only requires that the unit be “appropriate,” that is, appropriate to insure to employees in each case “the fullest freedom in exercising the rights guaranteed by this Act.”

Bartlett Collins Co., 334 NLRB No. 76 (2001); **Overnite Transportation Co.**, 322 NLRB 723 (1996). A Union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless “an appropriate unit compatible with that requested does not exist.” **P. Ballantine & Sons**, 141 NLRB 1103 (1963). Indeed, “the Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employees.”

Bartlett Collins Co., *supra*.

There is no dispute on the record that the CSPs share a community of interest among themselves given their common supervision, wage rates, benefits, job duties and working conditions. The issue to be decided is whether they also share a community of interest with the other job classifications identified by the Employer that is sufficiently strong to require the inclusion of these latter employees.

The discussion above fully addresses some of the community of interest factors to be considered. First and foremost, that discussion identifies the sharp differences between the job duties as well as the educational/licensing requirements of CSPs versus the other clinical staff. CSPs do not provide direct therapeutic services for clients but rather coordinate them. They are not licensed, privileged or called upon in any way to engage in therapy. This fact separates them from most of the other classifications the Employer seeks to include. Also, unlike the Residential Care Specialists, they do not reside with clients or train them in daily living skills.

A significant reason why their duties are distinct is that CSPs fill an entry-level position that has no educational/licensing requirements. Thus, they are not even entrusted with the task of making a diagnostic assessment of client needs. They receive that assessment from other employees and apparently apply it in a way that requires a minimum amount of analysis. If their jobs were more specialized, presumably they would be given ongoing training or required to take continuing education. That is not the case, however. Most of the other job classifications the Employer seeks to include require advanced degrees or licensing that entails continuing education credits.

Given these sharp differences in the nature of work performed and the educational/licensing requirements, the record evidence also shows that while CSPs have contact with professional and technical staff, their positions are not interchangeable. The CSPs do not

hold the licenses or privileges to perform other functions and they do not. While other employees may bill out for CSP services, there is no probative evidence that this work makes up a significant part of their job duties. There is no evidence of temporary transfers between these groups of employees and with respect to permanent transfers, the record shows that they overwhelmingly involve CSPs moving up to other positions once they acquire the credentials, and little if any reverse movement. The only other classification not included in the petitioned-for unit that performs primarily CSP services is the forensic service provider and I shall discuss them below.

With respect to common supervision, there is no dispute that the petitioned-for classifications, with the single exception of Child CSP, all come under supervisors in the Community Support Services Department headed by Theresa Butler. For supervisory purposes they are also organized in teams that, with the exception of two nurses on the PACT Team, consist of other CSPs. The only therapy providers found in Butler's department are the four counselors in the Dual Recovery Program, which is a separately constituted unit.

Aside from their separateness on the Employer's organization chart, the CSPs are also not functionally integrated with the professional, technical and other non-professional employees the Employer seeks to include. As noted above, there are no treatment teams that the CSPs participate in similar to those involved in the above-cited cases relied on by the Employer. Indeed, the tasks performed by the CSPs are so basic and simple that the Employer notes that just about any of its other employees are capable of doing them. Thus, there is no contention by the Employer that the other classifications would be unable to perform their duties without the participation of CSPs.

If the unit included all of the employees sought by the Employer, there would be a substantial wage differential between the entry level pay afforded a new, grade level 4 CSP and the salary given a grade level 7 professional. The latter would receive almost 2.5 times the wage of the latter. The Employer's wage scale is essentially tied to the licensing and educational degrees held by the staff. This explains the wide salary gap between a CSP without a degree or license making \$18, 600 and a grade level 7 LISW earning over \$44,000. It may be that the majority of CSP and non-CSP employees fall within the same grades, but the record does not include data on individual salaries. Absent that information, there is such a wide range in salary levels among the classifications sought to be included by the Employer as to suggest a lack of community of interest on this issue.¹⁶

With respect to the location of employment, the CSPs, except for those who work in forensics, have offices at the two largest facilities, Starr and Woodruff. However, the nature of the CSP's job requires a substantial amount of work in the field. CSPs are assigned to agency vehicles to facilitate their field work. The other employees the Employer seeks to include engage in much less field work and therefore generally use agency vehicles far less frequently.

There are points of commonality between the CSPs and the other employees the Employer seeks to include. They are subject to the same labor policies, enjoy the same fringe benefits and work with the same clients. These factors, however, are greatly outweighed by those that separate them. I therefore conclude that there is an insufficient community of interest to

¹⁶ Indeed, the Employer's suggested unit would mix exempt employees with those who are not exempt for FLSA purposes.

require that the petitioned-for unit must also include the classifications proposed by the Employer.¹⁷

There are, however, two classifications that are exceptions and should be included. These are the forensic service providers and the intake screeners. With respect to the former, the record demonstrates that they primarily perform CSP-like services and share common supervision with the CSPs. While they are required to hold a license with respect to their work in the forensic system, there is no evidence that they perform therapeutic services. On balance, therefore, the factors that separate other classifications from the CSPs do not exist for the forensic service providers and I find that they have a community of interest with the CSPs and should be included in the unit.

The Intake Screeners do not coordinate services for clients in the same way as CSPs but they do perform some CSP-like services. They do not perform therapy and do not need licensing or educational requirements for the position, although a license is preferred. They do not share common supervision with the CSPs. Nevertheless, while the community of interest between CSPs and Intake Screeners may not be overwhelming, on balance their interests are more closely aligned with the CSPs than the remaining job classifications. Accordingly, I shall include them in the unit found appropriate.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued

¹⁷ Like the CSPs, the Residential Care Specialists and Recreation Assistants do not have a licensing or educational requirement. Their job functions, however, are wholly different from those of the CSPs and I find that they do not share a sufficient community of interest with the latter to warrant their inclusion in the petitioned-for unit. While they may not be technical employees within the meaning of the Act, they nevertheless form a distinct group with a sufficient community of interest to form a separate bargaining unit.

subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Union of Operating Engineers, Local 18, 18S, AFL-CIO.**

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969).** Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days

from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994).**

The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by March 18th, 2003.

Dated at Cleveland, Ohio this 4th day of March, 2003.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

470-0100
470-8300